

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON LOCAL GOVERNMENT**

**Call to Order:** By **CHAIRMAN MARK NOENNIG**, on March 11, 2003 at 3:30 P.M., in Room 472 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Mark Noennig, Chairman (R)  
Rep. Eileen J. Carney, Vice Chairman (D)  
Rep. Scott Mendenhall, Vice Chairman (R)  
Rep. Arlene Becker (D)  
Rep. Rod Bitney (R)  
Rep. Larry Cyr (D)  
Rep. Ronald Devlin (R)  
Rep. Gary Forrester (D)  
Rep. Ray Hawk (R)  
Rep. Hal Jacobson (D)  
Rep. Jesse Laslovich (D)  
Rep. Bob Lawson (R)  
Rep. Rick Maedje (R)  
Rep. Penny Morgan (R)  
Rep. Holly Raser (D)

**Members Excused:** Rep. Alan Olson (R)

**Members Absent:** None.

**Staff Present:** Connie Erickson, Legislative Branch  
Linda Keim, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

The tape stamp for these minutes is placed before the content it refers to.

##### **Committee Business Summary:**

Hearing & Date Posted: SB 97, SB 98, SB 24, 3/6/2003  
Executive Action: None

**HEARING ON SB 97**

***{Tape: 1; Side: A; Approx. Time Counter: 0 - 8.7}***

**Sponsor:** SENATOR ROBERT STORY, SD 12, PARK CITY

**Opening Statement by Sponsor:**

**SEN. STORY** said that SD 97 requires the county superintendent in each county to report revenue amounts used to establish levy requirements for countywide transportation and retirement funds to the Superintendent of Public Instruction.

**Proponents' Testimony:**

**Madalyn Quinlan, representing the State Superintendent of Public Instruction,** said that county superintendents calculate the mill levy requirement for the three county school funds; the Elementary Retirement Fund, the County Retirement Fund, and the County Transportation Fund. She explained that the State Superintendent's Office gets expenditure and disbursement reports at the end of the year, but they don't get any information on revenue sources or revenue amounts. Expenditures of over \$100 billion will be taken out of the County Retirement Fund for the current year, but no reports are being collected to explain how those mill levies are passed. She said that the County Transportation Fund has a budget of \$56 million.

**Madalyn Quinlan** stated that it would be helpful for both the State Superintendent's office and the Legislature to have information on what revenue amounts are used to set mill levies. The State Superintendent's office is frequently asked for the amount of tax base aid being paid to school districts, and the amount of revenue used for the County Transportation Fund. Presented for the record were the following: a letter from Rachel Vielleux, Missoula County, a letter from Joyce Wegner of Lake County, and a document about the county funds involved.

**EXHIBIT (loh51a01)**

**EXHIBIT (loh51a02)**

**EXHIBIT (loh51a03)**

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. FORRESTER** asked if there are still 56 county superintendents. **Madalyn Quinlan** said that she did not know the

total number, but several counties have combined to provide the services offered by the county superintendent's office. She said that Missoula currently contracts with Mineral County.

**REP. FORRESTER** asked how long it takes to compile the required information. **Madalyn Quinlan** said that county superintendents already have to come up with revenue amounts in order to compute the mill levy. The Office of Public Instruction (OPI) is asking the superintendent to fill out a one-page sheet that reports what the revenue amounts are and communicate that to OPI. She said that it shouldn't involve any more work than what they are currently doing, other than to communicate that information.

**REP. FORRESTER** asked Ms. Quinlan to furnish a copy of the revenue report to the Committee so that he can discuss it with the County Superintendent of Yellowstone County. **Madalyn Quinlan** said that she would provide a copy of the worksheet. She said that the sheet may already be available, but that superintendents are not required to send them back to OPI at the present time.

**REP. MENDENHALL** asked if it is routine and usual for the legislature to establish specific duties for employees of the state in statute. **SEN. STORY** said that it is common practice to put into statute what is expected of various elected officials. He said, "A large part of the code book tells people what to do."

**CHAIRMAN NOENNIG** asked if OPI has been requesting this information and not getting it. **Madalyn Quinlan** said that OPI has not requested this information from the counties before.

**CHAIRMAN NOENNIG** asked why Lines 26-27 on Page 1 don't already cover this request. **Madalyn Quinlan** stated that OPI thought it was important to clarify in statute that this is one of the required reports for the office and that the information is needed by the second week in September.

**Closing by Sponsor:**

**SEN. STORY** said that this issue came about in Special Session when they were discussing what reserves were available and if they could be used to take care of some of the taxpayer's obligations due to changes in block grants. If county superintendents don't use their reserves and just vote a mill levy it affects what the state has to contribute to the guaranteed tax base and how taxpayers on the local level are dealt with. He said that legislators don't know how mill levies are being arrived at on the local level when they get down to making individual policy decisions to raise the money they need, since reporting is not required.

**HEARING ON SB 98*****{Tape: 1; Side: A; Approx. Time Counter: 8.7 - 30}*****Sponsor: SEN. JEFF MANGAN, SD 23, GREAT FALLS****Opening Statement by Sponsor:**

**SEN. MANGAN** said that SB 98 would provide that certain personal-care facilities are community residential facilities for purposes of property zoning regulations. He said that assisted-living and personal-care facilities are some of the fastest growing business industries in Montana and across the nation. Personal-care facilities provide another level of assisted-living care before entering a nursing home. He stated that there is a high demand for those people to stay within residential neighborhoods that have access to the things they are used to, such as sidewalks and parks. The State of Montana licenses and regulates these facilities. Some cities currently allow zoning for these facilities, but Great Falls is one of those that doesn't. The premise of the bill is that this is another continuum of care for our seniors that would allow us to keep them in smaller residential homes with more social atmosphere. These people don't need the level of medical and nursing care found in a nursing home, but still need assistance with daily living that has been licensed and regulated similar to what has been done previously with group homes, adult foster homes, and homes for the developmentally disabled.

**Proponents' Testimony:**

**Rose Hughes, Executive Director of the Montana Healthcare Association (MHA)**, said that MHA represents nursing homes and assisted-living facilities. She presented written testimony which she read to the committee, and a copy of Part 4 of the Montana Code for the record.

**EXHIBIT(loh51a04)****EXHIBIT(loh51a05)**

**Betty Beverly, Executive Director, Montana Senior Citizens Association**, said that assisted living doesn't just pertain to the elderly. She said that she was one of five college students who took on different tasks in the home they shared, and that Jeanette Rankin managed the first assisted-living home years ago in a Quonset hut where she had a number of elderly people living together. Ms. Beverly said that assisted-living is especially important in Montana where there are a lot of "Mom and Pop" assisted-living homes that take in someone's friend just to help them out. She stressed that these homes need to be in a

residential area, and that this is eight beds or less, not 120 beds. A big issue for seniors is choice and cost, and business-zoned areas pay higher taxes than residential areas do. She said that this bill is appropriate, the statute is already there for the group homes, and we need to make small homes available to the elderly for assisted-living and skilled nursing use.

**Bob Holmes, Helena citizen,** said that this bill may eventually serve everyone's needs by offering a small residential unit to help the elderly stay active. He said that this makes it easier on the elderly, and benefits the children of the elderly also.

**Joe Mazurek, representing the City of Great Falls,** said that in the Senate hearing it became clear that this bill is the result of a private dispute in Great Falls. He said, "The City of Great Falls was not involved but felt it was important to retain this distinction." Having the ability to allow these homes to be treated as residential facilities is beneficial to communities.

**Opponents' Testimony:**

Prior to the hearing, copies of letters of opposition were given to each Committee member and will be made part of public record. The letters received were from the following citizens in Great Falls: Dodie Pinski, Col. Harold E. Brauer USAF (Retired), Randel and Barbara Halbert, Homer and Gladys Potts, and Rell Porter.

**EXHIBIT (loh51a06)**

**EXHIBIT (loh51a07)**

**EXHIBIT (loh51a08)**

**EXHIBIT (loh51a09)**

**EXHIBIT (loh51a10)**

**Steve Potts, Attorney in Great Falls,** and the son of two people who live in the Montana Addition neighborhood in Great Falls, said that he also represents 40 other families from that subdivision and gave a brief history of the reason for the bill. He stated that an assisted-living operator misrepresented her initial request to the City in 2000 by requesting a permit to operate group homes instead of personal-care facilities, and group home permits were issued. He said that the problem is that this is a business, just like an apartment house or a motel.

**Mr. Potts** explained that in Great Falls there is a City-County Planning Board that considers zoning issues and another board that considers "use variances" and recommends them to the City Commission. He said that local people are usually best suited to make zoning decisions about their own community because the particular neighborhood being considered is easily accessed and the people who will be affected can address the proposed use.

**{Tape: 1; Side: B; Approx. Time Counter: 0 - 14}**

**Mr. Potts** stated that under SB 98, the neighborhood won't be considered. He said, "The Legislature is being asked to override all that for all time and not consider the character of a neighborhood, the people, or the particular use." He stressed that an assisted-living facility is different from the other nonprofit entities that are included in the Towe Amendment, and in the Great Falls case, revenues of \$32,000/month are the average. He said that no one is against senior citizens or the concept of assisted-living facilities, but there have always been zoning districts in every community that permit certain uses and do not permit others. He stated, "There are plenty of zoning districts in Great Falls that do permit zoning for this type of operation, but businesses are not allowed in the Montana Addition."

**Informational Testimony:**

**Roy Kemp, Licensing Bureau Chief for Department of Public Health and Human Services (DPHHS)**, said that DPHHS licenses assisted-living and personal-care facilities and that he would be available to answer any questions the Committee might have.

**Questions from Committee Members and Responses:**

**REP. CARNEY** asked what the average size of the 156 assisted-living homes in Montana would be. **Rose Hughes** said that there are 50 homes with eight beds or less, 118 facilities with 9-20 beds, and five facilities with over 100 beds. She said this bill would only apply to homes with eight beds or less. The reason that is not in the bill is because the bill only adds these facilities to the definition. The second page of Exhibit 5 puts that definition into practice.

**REP. CARNEY** asked for a description of the difference in the neighborhoods where personal-care facilities are allowed and would not be allowed. **Mr. Potts** said that one zoning district in Great Falls permits only single family housing and there are four types of residential zoning districts. Other districts are local business, general commercial, industrial, etc. He said that there are about eight types of zoning districts and that only one prohibits this type of facility.

**REP. CARNEY** asked if the other areas would be partly residential and partly business. **Mr. Potts** said that some may be partly residential and partly business, but not all would be. He explained that the area being discussed is zoned "A" district. A

"B" zoning district does not permit businesses, but would permit an assisted-living facility, an eight-plex or a four-plex.

**REP. CARNEY** asked what the original permit was issued for and what is being done differently now. **Mr. Potts** said that the original permit was issued for a group home and that is covered under the Towe Amendment. A group home is a facility where developmentally disabled may live in a family-type setting with houseparents.

**REP. CARNEY** asked for an explanation of the difference between a group home and assisted-living home. **Roy Kemp** explained that a group home has a number of designations; a group home for the permanently disabled, for the developmentally disabled, for juveniles, and therapeutic. Some homes are required to be non-profit organizations and are limited to eight and 12 children. If the home is for the developmentally disabled or mentally ill, the facility is limited to eight adults.

Mr. Kemp explained that an assisted-living facility provides supportive living, supervision of daily activities, medication reminders, prepared meals, and housekeeping. The assisted-living facility is a transition just before a nursing home. When a higher level of care is sought, an individual would usually have to be relocated to a nursing facility.

**REP. CARNEY** said that she did not understand why there would be a difference between a group home and assisted-living. She asked, "Why wouldn't assisted-living fit under group homes in the current law?" **Roy Kemp** stated that an assisted-living facility is distinguished in statute as a specific facility that requires a specific type of license and a specific set of standards that are not the same as a group home. Group homes have similar regulations but each one has requirements that apply to the type of services and care being provided in that environment.

*{Tape: 1; Side: B; Approx. Time Counter: 14 - 29}*

**REP. MORGAN** asked how much is typically charged per day. **Rose Hughes** answered that there is a large variation. Smaller ones provide care for the amount of income that the elderly get from Social Security or Retirement income. The range is from about \$800 a month up to \$2-3,000. **REP. MORGAN** asked if the owners of these facilities receive Medicaid funding. **Rose Hughes** answered that some personal-care facilities receive Medicaid funding for a certain number of residents under the Medicaid Waiver Program.

**REP. MORGAN** asked, "Why do you feel that it is necessary for a law to be in place for these facilities to be in a residential

area that have nothing (tape inaudible) residential when they can be in other areas that are very nice?" **Rose Hughes** said that as a matter of policy, the state has already said that it is important for the developmentally disabled, the severely developmentally disabled, the mentally disabled, youth foster homes, daycare facilities, rehab, alcohol rehab, etc. who need these kinds of care to be in small settings and that it is desirable to be in residential communities. If that makes sense, then it makes sense to extend that same protection and right to our elderly.

**REP. MORGAN** described the units she had available in Billings and asked why the people who want to put in a business, who still wouldn't have to pay business taxes, wouldn't gravitate to the areas they already can be in. **Rose Hughes** said that many residences are purchased in single family residential areas to create a homelike environment for the elderly who need some help. She said there is often resistance in the neighborhood and they all get along later.

**REP. RASER** asked for a description of the differences in care between an adult foster family care home, a group home for severely disabled persons, and a personal-care licensed facility. **Mr. Kemp** said that adult foster care is limited to disabled or mentally disabled adults who are highly functional. The owner fosters these people like one of the family, fixes meals, gives room and board, reminders, light personal-care, and makes sure the person is thriving and well. The personal-care "A" level facility is limited to eight people and is almost the same as the adult foster care facility which is limited to four people. Group homes are harder to compare because developmentally disabled persons require different care.

**REP. RASER** asked for confirmation that a licensed adult foster family care home is very similar to a personal-care facility.

**Mr. Kemp** replied that the difference is the limit of four people.

**REP. RASER** asked, "If a licensed adult foster family home were offered rather than a personal-care facility, could the zoning be stopped or could this lawsuit go forth? Is that an allowable use under residential zoning standards?" **Mr. Potts** said that the Towe Amendment was already in effect when the operator of the homes bought them, and the Towe Amendment overrode whatever zoning ordinances are in effect, so there would be no legal way to oppose an adult foster family home. **REP. RASER** asked for clarification that the short answer would have been "Yes, this would have been allowed." **Mr. Potts** confirmed that was correct.

**REP. RASER** said that the two facilities as described by Mr. Kemp



are very similar and said that she was confused as to what the specific objection is, except the common "not in my back yard."

**Mr. Potts** said he did not think the two facilities were that similar because a personal-care facility is a business with employees, parking problems, lots of visitors, and commercial garbage. He said that the personal-care facilities in the Montana Addition are not maintained as nicely as private homes.

**REP. RASER** said that daycare facilities in family homes are considered to be residential, and they are businesses with employees. She asked, "Would that be something that is a currently-allowed use? Would it be considered residential if they wanted to move into this neighborhood?" **Mr. Potts** said that with a daycare the owner typically lives in the home and has children come in during the day. With the facilities in question, the owner does not even live in Great Falls. He said that a daycare probably fits in any zoning district.

**REP. MENDENHALL** asked if the facilities in question are assessed as commercial property. **Mr. Potts** said that he could not answer that. He said that he did not think they are assessed commercially, but the Department of Revenue (DOR) may not know what the facilities are being used as. **REP. MENDENHALL** asked if the facilities would be assessed as commercial property in the other seven zoning districts where they would be allowed. **Mr. Potts** said that he did not know DOR regulations. **REP. MENDENHALL** asked if this could be a strategy to avoid commercial assessment by targeting residential property areas to locate these homes on. **Mr. Potts** said that he had no knowledge of that in this case.

**REP. MAEDJE** asked, "What was the main objection of the neighbors in the case under discussion?" **Mr. Potts** said that with the first home, it was the number of parked cars, the commercial garbage containers, and the increased activity. Then the second home was up and running and it was learned there were negotiations to purchase a third home next to the first one.

*{Tape: 2; Side: A; Approx. Time Counter: 0 - 9}*

**REP. MAEDJE** asked if the parking problem could be solved by local ordinances or by building a parking lot. **Mr. Potts** explained, "This is a residential neighborhood and there is no place for a parking lot except by paving the front yard. The only place for additional cars is on the street." **REP. MAEDJE** suggested restricting parking to one or two vehicles per resident and putting up some "No Parking signs." **Mr. Potts** replied, "If this bill is adopted, up to eight people are permitted and they can all have cars."

**REP. DEVLIN** asked Gordon Morris to address the tax consequences.

**Gordon Morris, Director Montana Association of Counties (MACo)**, said that commercial and residential property are both Class 4 properties and are taxed at the same rate. Garbage fees might be higher for commercial, but property taxes are identical.

**REP. FORRESTER** asked Howard Sumner to respond to the tax issue.

**Howard Sumner, Billings citizen**, said that his understanding is that taxes would be less on a Class 4 commercial facility with the Homestead Exemption than at a straight commercial facility. He stated that less taxes would be paid if it was classified straight residential or multifamily instead of commercial.

**CHAIRMAN NOENNIG** asked if the City of Great Falls could solve this problem by changing the zoning. **Joe Mazurek** said that the City could do that, but rather than go through that process, they could simply rely on this statute to treat a personal-care facility the same as an adult foster care, a halfway house for alcohol rehabilitation, a youth foster or group home, etc. He said, "Given the beneficial purpose, assisted-living facilities for seniors are certainly worthy of inclusion within this group."

**CHAIRMAN NOENNIG** asked Mr. Potts what the disposition of his case would be if this bill passed. **Mr. Potts** said that as far as the claim that the defendant was violating the zoning ordinance, the case would go away. There are also restrictive covenants that were put in place by the State of Montana, the previous landowner. This statute will not nullify the claim that the facilities are violating the restrictive covenants.

**CHAIRMAN NOENNIG** asked for confirmation that there would still be a case that the injunction is proper because the case is in violation of the covenants. **Mr. Potts** said that he believed so, and commented a response to Mr. Mazurek's presence, "There are people in city government who are afraid that one side or the other might sue them, and that makes his purpose clear today."

**CHAIRMAN NOENNIG** asked Mr. Mazurek if he wanted to respond. **Joe Mazurek** stated, "I know nothing of any threat against the city. I simply called the City Manager when this bill first came about, asked how this would impact the City of Great Falls; if we should be concerned about this or not. They said that they were not."

**CHAIRMAN NOENNIG** referred to letters which the Committee received, Exhibits 6-10, and said they all have addresses that coincide with the addresses in the neighborhood, and said, "I am assuming that we have a problem with one group of facilities in Great Falls." He asked **SEN. MANGAN** if there was a problem

anywhere else. **SEN. MANGAN** said that he would address that and several other questions during his closing.

**Closing by Sponsor:**

**SEN. MANGAN** stated that he did not know about this suit until he got a letter from Mr. Potts after the Senate hearing. He said that his response was to get opinions from several organizations as to whether there was a need for this. Both Missoula and Billings have done variances for a few people, but this is fairly new and there hasn't been a big push yet. He emphasized that this isn't just a Great Falls issue. He said that the Towe Amendment was a result of the deinstitutionalization in the 1970s which led to people having a lot of scarey ideas about group homes. He commented that if the facility is shoddy and run down, that it probably won't be in business very long, and said that those things work themselves out. **SEN. MANGAN** said that he felt this was a licensing issue, and that he had asked Mr. Potts to pursue that issue further with Mr. Kemp. He said that he saw no harm in letting the elderly live in residential neighborhoods, and wants to have that ability.

**HEARING ON SB 24**

***{Tape: 2; Side: A; Approx. Time Counter: 14 - 30}***

**Sponsor: SEN. JEFF MANGAN, SD 23, GREAT FALLS**

**Opening Statement by Sponsor:**

**SEN. MANGAN** said that SB 24 will allow a county or municipality to charge a convenience fee for providing electronic government services. He said that the Legislature first allowed the State of Montana to charge convenience fees for electronic information in 1999, and this is a natural progression down to local government. He said that some local governments are already charging convenience fees, so the Legislature needs to either pass this bill or make a statement and disallow charging convenience fees.

**Proponents' Testimony:**

**Gordon Morris, Director, Montana Association of Counties (MACo)**, said that we are being asked to provide public information in a "E" format to an increasing extent. He provided a copy of a Resolution from MACo supporting the use of a convenience fee for providing electronic information and giving suggested language.

**EXHIBIT (loh51a11)**

**Ronda Carpenter, representing the Montana County Treasurer's Association,** said that the Constitution guarantees the public the right to access documents and many people are asking the county for documents to be available on line, or for information to be e-mailed to them so that they can manipulate it.

**Ms. Carpenter** shared personal information from their office about trying to get absentee ballot chasers. She said that some counties agreed to fax a list and charged a fee on a daily basis, some e-mailed the list free, some charged for the e-mailed list, and some counties had the information available on line. A few required an actual visit to the county courthouse to write down every name by hand because there were no funds for a database. She said that her office would have gladly paid a fee to have the information in a written format that could be manipulated.

**Ms. Carpenter** said that this is not a moneymaker; the language is permissive, and the fee can only be charged to recover the costs. Someone needs to pay for every additional service that we ask counties to provide. She said that the treasurers feel that the people that use this information are also the ones who are asked to pay the fees.

**Peggy Beltrone, Cascade County Commissioner,** said that Cascade County is one of the counties currently charging a convenience fee. She said that the County has worked with a title company on a subscription basis for 3-4 years at a cost of \$100 per year. She said she felt this should be encouraged across the state.

**Joe Mazurek, representing the City of Great Falls and the League of Cities and Towns,** discussed the website DISCOVERING MONTANA which was created as a result of the Electronic Government Services Act. The objective of that website was to make government services more accessible and available to the public. He said that allowing convenience fees did not mean that everything would be charged for.

**Joe Mazurek** said that a government entity would be able to obtain revenue on the state level at the Department of Justice where they could sell driving records to insurance companies in an electronic format. Professional licenses can be re-registered electronically, in person, or by mail. The state contracts with an organization called Montana Interconnect which provides the infrastructure for the state to give electronic services through the self-funded portal that the state operates. The same thing would be available for cites. He said that when the Electronic Governmental Services Act was passed it was contemplated that it would be extended to local governments and that is why some local governments are charging fees.

**Opponents' Testimony:**

**John Shontz, Attorney, representing Montana Newspaper Association, and the Montana Freedom of Information Hotline,** provided a pamphlet called "Access in Montana" which gives information about access to public meetings and public documents. **EXHIBIT (loh51a12)**

He said that the distinction in this bill is that governments can charge for a service, but the issue becomes one of charging for access to that information, or access to public documents. The intent of the law is for the public to have access beyond the paper file. To be charged a small amount for the cost of making copies is an appropriate charge. The public can't be charged for staff time or for the computer time it takes to generate a deed, only for the reasonable direct cost of reproducing that document.

**{Tape: 2; Side: B; Approx. Time Counter: 10 - 30}**

Governments cannot charge an individual to create the database to generate a legal description for his/her property. The public can only be charged to print the copy. **John Shontz** said that the Supreme Court issued a 27-page Opinion in November 2002 on government access and right to know in Montana that had to do with the Billings School District. An overriding statement addressed to state and local governments was to stop using technicalities to close and put a price on information that the public has a right to obtain for free. The Opinion said, "We cannot discriminate on the basis of cost."

**Roger Halver, Montana Association of Realtors,** said there should not be a charge for public information. He said that library computers are kept busy all day long with people who can't afford computers. He asked, "Are we talking about public information that is only available to those who can pay for it?" Much of the information that Realtors would want to access electronically has already had fees paid on it, for example recording a deed. He said that Realtors are also concerned about the convenience fees on Page 1, Lines 14-15 that are charged to recover costs. He said it is left wide-open as to what a county might want to set as a convenience fee. **Mr. Halver** said that they had seen abuses and that Impact fees of \$8,000 are being imposed on a standard \$130,000 home in Bozeman.

**Clayton Fiscus, Realtor, Billings,** said that he did not believe he should be charged for getting information from the county if he wants to check and see if taxes were paid on his rental

property. He stated that having the public access information themselves saves the government thousands of dollars a year.

**Howard Sumner, Citizen**, said that if there are transportation issues, the people that can least afford it wouldn't have a way to get to the information. He commented, "The government has better access to information because they have created electronic files, and now they want to charge for something that actually consumes less governmental services to provide."

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. LASLOVICH** asked if state agencies are charging fees and how much they are charging. **Mr. Shontz** replied that fees are charged on rare occasions for the copy and the printer time to print it off and it is unconstitutional to charge for more than that. He said that there is a distinction between the government providing an electronic service versus providing information electronically to the public. If an individual wanted to look in the files of the office of Commissioner of Political Practices, a staff person would accompany the individual and they would be charged for the staff person's time to examine documents. That cannot be done, under Article 2 of the Constitution.

**Mr. Shontz** said, "What can be done is when you decide what documents you want, you bring them up and the staff person makes a xerox copy of the requested documents." The only charge would be for the staff time to make copies and to use the copier.

**REP. LASLOVICH** referred to Section 2-6-110 of the Montana Code and said that one of the subsections covers a state agency being allowed to impose a fee. He said that **REP. HAWK** thinks the bill is not needed because it covers agencies and stated, "I assume that it does not apply to MACo." **Gordon Morris** said that is the conclusion, that it applies to state agencies only. The language was modeled on the bill that was passed several sessions ago.

**REP. LASLOVICH** asked why language in statute is more specific and allows a fee to be charged for expenses incurred by an agency to provide online computer access. **Gordon Morris** said that online access is not what MACo is trying to do. They are trying to provide a service not associated with accessing the information, just having that information available in an electronic format. He said, "If you want a xerox copy, they charge to xerox it. If you ask them to download it on a disc and walk out with the disc, they want to charge you for it."

**REP. RASER** referred to Peggy Beltrone's testimony which indicated they are already charging for access to public documents. She asked, "If they can already do that, do we need this bill?" **SEN. MANGAN** said that is where the issue is, some folks don't think we have the authority, and some folks think we do and they want a statute to clear that up.

**REP. RASER** asked if objections have been filed. **SEN. MANGAN** answered that he was not aware of any specific objection.

**REP. RASER** asked under what authority Cascade County feels that they could charge a fee. **Ronda Carpenter** said that they felt they could charge a fee because it was not specifically denied in law. She said that a number of other counties and some people in Cascade County would feel more comfortable with specific legislative intent allowing them to charge.

**REP. MORGAN** asked Ms. Carpenter to discuss convenience fees that might be considered exorbitant such as for Voter Registration Lists. **Ms. Carpenter** said that under statute, Voter Registration Lists can be charged for. **REP. MORGAN** said that when the statute was put into place names had to be copied by hand, but with the electronic era copies can be made for the cost of about \$.97 and only a few minutes to push a button. She asked, "Who will determine what the fee is and if it is price gouging?" **Ms. Carpenter** said that it costs money to put that information on a database, keep that database current, and make it available. In some counties, if you personally go to the courthouse for a Voter Registration List you will pay anywhere from one cent to four cents a name, or whatever they are currently charging, and you actually get a printed-out list. If you want it put into an electronic format, you can hire someone. This fee would allow the convenience of a disc.

**REP. MORGAN** asked why a sunset law wasn't in the bill. **SEN. MANGAN** said that the technology age will not end any time soon and it would be a premature thought to have a sunset. The language is permissive, and not all counties will move to this. He said, "The website DISCOVERING MONTANA has a lot of convenience fees behind that portal which other businesses charge for such as software, portals, links, and other things we don't know about." Language in current law was utilized to set that website up to make up-to-date information available. It is not just the State of Montana, it is about utilizing and bringing in other partners too.

**REP. BITNEY** expressed concern about entities that use the service frequently such as a title company, a law office, an automobile dealership, or other governmental agencies. He said that a title

company could accumulate thousands of dollars a year in fees.

**SEN. MANGAN** said he did not think that information available free online today would change to fee-only information.

*{Tape: 3; Side: A; Approx. Time Counter: 0 - 14.9}*

**SEN. MANGAN** stated that if they start charging exorbitant fees, those issues can be raised publicly. Even if a reasonable fee were charged to title companies, it saves them a lot of time. He said, "If it is not worth the fee, entities will do it the old fashioned way and get it for nothing."

**REP. BITNEY** asked if title company employees would be charged a fee if they physically accessed that information themselves. **SEN. MANGAN** said that fees would be up to each local government.

**REP. BITNEY** asked Ronda Carpenter the same question. **Ronda Carpenter** said that Cascade County welcomes title company employees who physically access the information the company needs. She said that there is no fee because it is not electronic information. She commented that Cascade County set up a system with "cookies" that allow access to documents. For a yearly fee of \$100, title company employees can sit in their own office and look up the information electronically.

**REP. MAEDJE** referred to Article 2, Section 9 of the Constitution and asked Mr. Shontz to discuss the "Right to Know" section. **Mr. Shontz** said that the Constitutional Convention had a big debate about interpretation. He said, "The decision-making arena is in the Supreme Court and they have repeatedly stated that with an electronic fee of \$.97 for the disc, if running the computer costs \$1 a minute with two minutes to run the program, then \$2.97 is what should be charged." A charge can be made for accessing and making a copy, but not for maintaining the database whether it is on the computer, the typewriter, or on the abstract. He said that the technology has changed, but the issues haven't.

**REP. MAEDJE** asked about the voter list which was sorted by a government employee. **Mr. Shontz** said that is essentially managing the database, whether it is done electronically, with cards, or by hand. The key is that you can't move the database to a computer and then charge a fee for it.

**CHAIRMAN NOENNIG** asked Mr. Shontz, "Are you speculating that some of the services charged for may be constitutional and some may not, depending upon how it is done?" **Mr. Shontz** said that was correct. **CHAIRMAN NOENNIG** asked if the public agency bill that allows electronic access, Section 2-6-110, meets constitutional requirements. **Mr. Shontz** said yes, to the extent that the



Secretary of State can charge for the service of a certified copy of the Articles of Incorporation which can be done electronically. A charge can be made for the copy, but not for accessing the database.

**CHAIRMAN NOENNIG** asked, "What specifically do you anticipate this bill is going to do that isn't constitutional?" He said that he doesn't want to enact anything that would provide for unconstitutionally-charged fees, and would like to address that in the bill. **Mr. Shontz** suggested that a clear limit be inserted, and that the same could apply at the state level. He suggested saying that copy costs could be charged for and duplication costs could be charged for, with the idea that the public can't be charged a fee for the database.

**CHAIRMAN NOENNIG** asked about the \$35 fee he had to pay Yellowstone County to get a disc of the voters in his district. He asked, "Is that a legitimate fee?" **Mr. Shontz** said that the Constitution indicates it may be an excessive fee unless it cost \$35 for the county to make that disc. He said, "It is a fee beyond the reasonable cost of providing the information."

**CHAIRMAN NOENNIG** asked about adding the word "reasonable" to the bill as far as cost of services. **Mr. Shontz** said that is found under the definition of a service. The cost of providing a copy of government information is a service. The constitutional problem arises if it goes beyond providing that copy; i.e., database management or computer time to put it together.

**CHAIRMAN NOENNIG** referred to Page 9 in Exhibit 12 which states that Section 2-6-110 covers the labor charge and hourly rate of an employee for making copies. He asked, "Would producing the disc be included in that and be a legitimate charge?" **Mr. Shontz** said that putting the electronic information on the disc can be charged for, but nothing beyond that.

**Closing by Sponsor:**

**SEN. MANGAN** asked the Committee not to take Executive Action until he had the opportunity to sit down with the opposition and discuss the bill. He reiterated that it is already being done at the state level. People already go to state websites and access information because that is what the public wants. It is not free; at some point we have to pay for this. If we allow local governments to charge fees on some items that aren't constitutionally correct, that we have always charged for paperwise, this isn't any different. It is just moving ahead in the information age. He stressed that the word "fees" is not "taxes" and there will not be that many. He said that the bill

is reasonable, and he will work with the newspapers on an amendment to make sure nothing is unconstitutional.

**CHAIRMAN NOENNIG** asked SEN. MANGAN to let him know when he is ready for the Committee to go ahead with Executive Action.

**ADJOURNMENT**

Adjournment: 5:40 P.M.

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REP. MARK NOENNIG, Chairman

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LINDA KEIM, Secretary

MN/LK

**EXHIBIT** (loh51aad)